

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH T. HAYES	:	CIVIL ACTION
	:	
v.	:	
	:	
AMERICAN INTERNATIONAL GROUP,	:	
et al.	:	NO. 09-2874

ORDER

AND NOW, this 11th day of September, 2014, upon careful and independent consideration of the following documents:

U.S. Life's motion for summary judgment and associated briefing (Docket Nos. 299, 303, 307);

AIG's motion for summary judgment and associated briefing (Docket Nos. 296, 303, 306);

U.S. Life's motion to preclude the testimony of plaintiff's expert witness and associated briefing (Docket Nos. 301, 304, 308);

U.S. Life's motion to strike plaintiff's affidavit and associated briefing (Docket Nos. 313, 318, 320);

The Report and Recommendation of Magistrate Judge Elizabeth T. Hey;

Plaintiff's Objections to Magistrate Judge's Report and Recommendation (Docket No. 323);

U.S. Life's limited objections to Report and Recommendation (Docket No. 324), plaintiff's response, and U.S. Life's reply, thereto; and,

U.S. Life's response to plaintiff's objections to the Report and Recommendation

IT IS HEREBY ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED;
2. The objections of all parties are OVERRULED;
3. Defendant U.S. Life's motion for summary judgment (Docket No. 299) is granted in part and denied in part. The motion is GRANTED as to plaintiff's claims against U.S. Life and DENIED as to U.S. Life's counterclaims;
4. Defendant AIG's motion for summary judgment (Docket No. 296) is GRANTED;
5. Defendant U.S. Life's motion to preclude expert witness (Docket No. 301) is GRANTED;
6. Defendant U.S. Life's motion to strike plaintiff's affidavit (Docket No. 313) is granted in part and denied in part. The motion is GRANTED as to paragraphs 8, 12, 13, 23, 24, 25, 26 and 30, which should be stricken. The motion is DENIED AS MOOT as to paragraphs 27, 28 and 29. The motions is DENIED in all other respects.

The Court has not considered, on the merits, the argument that U.S. Life makes for the first time in its

objections to the R&R -- that collateral estoppel should also apply to its counterclaims. The Court concludes that it would be procedurally improper for the Court, after so much briefing and oral argument before Magistrate Judge Hey, to reach for an issue that was never presented to Magistrate Judge Hey. In addition, the defendant's briefing on this topic in its objections was perfunctory.

BY THE COURT:

/s/ Mary A. McLaughlin_____
MARY A. McLAUGHLIN, J.